

HOUSE BILL No. 4988

June 24, 1991, Introduced by Reps. Niederstadt, Rocca, Profit, Pitoniak, Weeks, Varga, Wozniak, Leland, Ostling, Knight, Gilmer, London, Martin, Bennett, Shugars and Gagliardi and referred to the Committee on State Affairs.

A bill to amend the title and sections 2501 and 2512 of Act No. 299 of the Public Acts of 1980, entitled as amended "Occupational code,"

section 2501 as amended by Act No. 269 of the Public Acts of 1990, being sections 339.2501 and 339.2512 of the Michigan Compiled Laws; and to add section 2517.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2501 and 2512 of Act
2 No. 299 of the Public Acts of 1980, section 2501 as amended by
3 Act No. 269 of the Public Acts of 1990, being sections 339.2501
4 and 339.2512 of the Michigan Compiled Laws, are amended and
5 section 2517 is added to read as follows:

TITLE

1
2 An act to revise, consolidate, and classify the laws of this
3 state regarding the regulation of certain occupations; to create
4 a board for each of those occupations; to establish the powers
5 and duties of ~~the department of licensing and regulation~~
6 CERTAIN DEPARTMENTS AND AGENCIES and the boards of each occupa-
7 tion; to provide for the promulgation of rules; to provide for
8 certain fees; to provide for penalties and civil fines; TO ESTAB-
9 LISH RIGHTS AND REMEDIES OF CERTAIN PERSONS UNDER CERTAIN
10 CIRCUMSTANCES; to repeal certain parts of this act on a specific
11 date; and to repeal certain acts and parts of acts.

12 Sec. 2501. As used in this article:

13 (a) "Real estate broker" means an individual, sole proprie-
14 torship, partnership, association, corporation, common law trust,
15 or a combination of those entities who with intent to collect or
16 receive a fee, compensation, or valuable consideration, sells or
17 offers for sale, buys or offers to buy, provides or offers to
18 provide market analyses, lists or offers or attempts to list, or
19 negotiates the purchase or sale or exchange or mortgage of real
20 estate, or negotiates for the construction of a building on real
21 estate; who leases or offers or rents or offers for rent real
22 estate or the improvements on the real estate for others, as a
23 whole or partial vocation; who sells or offers for sale, buys or
24 offers to buy, leases or offers to lease, or negotiates the pur-
25 chase or sale or exchange of a business, business opportunity, or
26 the goodwill of an existing business for others; or who, as owner

1 or otherwise, engages in the sale of real estate as a principal
2 vocation.

3 (b) "Real estate salesperson" means a person who for compen-
4 sation or valuable consideration is employed either directly or
5 indirectly by a licensed real estate broker to sell or offer to
6 sell, to buy or offer to buy, to provide or offer to provide
7 market analyses, to list or offer or attempt to list, or to nego-
8 tiate the purchase or sale or exchange or mortgage of real
9 estate, or to negotiate for the construction of a building on
10 real estate, or to lease or offer to lease, rent or offer for
11 rent real estate, or who sells or offers for sale, buys or offers
12 to buy, leases or offers to lease, or negotiates the purchase or
13 sale or exchange of a business, business opportunity, or the
14 goodwill of an existing business for others, as a whole or par-
15 tial vocation.

16 (C) "EMPLOY" OR "EMPLOYMENT" MEANS THE RELATIONSHIP BETWEEN
17 A REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR A REAL ESTATE
18 SALESPERSON WHICH MAY INCLUDE AN INDEPENDENT CONTRACTOR
19 RELATIONSHIP.

20 (D) "INDEPENDENT CONTRACTOR RELATIONSHIP" MEANS A RELATION-
21 SHIP BETWEEN A REAL ESTATE BROKER AND AN ASSOCIATE BROKER OR REAL
22 ESTATE SALESPERSON THAT SATISFIES BOTH OF THE FOLLOWING
23 CONDITIONS:

24 (i) A WRITTEN AGREEMENT EXISTS IN WHICH THE REAL ESTATE
25 BROKER DOES NOT CONSIDER THE ASSOCIATE BROKER OR REAL ESTATE
26 SALESPERSON AS AN EMPLOYEE FOR FEDERAL AND STATE INCOME TAX
27 PURPOSES.

1 (ii) NOT LESS THAN 75% OF THE ANNUAL COMPENSATION PAID BY
2 THE REAL ESTATE BROKER TO THE ASSOCIATE BROKER OR REAL ESTATE
3 SALESPERSON IS FROM COMMISSIONS FROM THE SALE OF REAL ESTATE.

4 Sec. 2512. (1) A licensee shall be subject to the penalties
5 set forth in article 6 who commits 1 of the following:

6 (a) Acting for more than 1 party in a transaction without
7 the knowledge of the parties.

8 (b) Representing or attempting to represent a real estate
9 broker other than the employer, without the express knowledge and
10 consent of the employer.

11 (c) Failure to account for or to remit money coming into the
12 licensee's possession which belongs to others.

13 (d) Changing a business location without notification to the
14 commission.

15 (e) ~~If~~ IN THE CASE OF a real estate broker, failing to
16 return a real estate salesperson's license within 5 days as pro-
17 vided in section 2507.

18 (f) Paying a commission or valuable consideration to a
19 person not licensed under this article INCLUDING PAYMENT TO ANY
20 PERSON PROVIDING THE NAMES OF, OR ANY OTHER INFORMATION REGARD-
21 ING, A POTENTIAL SELLER OR PURCHASER OF REAL ESTATE. However, a
22 licensed real estate broker may pay a commission to a licensed
23 real estate broker of another state if the nonresident real
24 estate broker does not conduct in this state a negotiation for
25 which a commission is paid.

1 (g) Failing to deposit in a custodial trust or escrow
2 account money belonging to others coming into the hands of the
3 licensee in compliance with the following:

4 (i) A deposit or other money accepted by a person, partner-
5 ship, corporation, or association holding a real estate broker's
6 license under this article shall be retained by a real estate
7 broker pending consummation or termination of the transaction
8 involved, and shall be accounted for in the full amount of the
9 money at the time of the consummation or termination.

10 (ii) A real estate salesperson, on receipt of a deposit or
11 other money on a transaction in which the real estate salesperson
12 is engaged on behalf of a real estate broker-employer, shall pay
13 over the deposit or other money to the real estate broker.

14 (iii) A real estate broker shall not permit an advance pay-
15 ment of funds belonging to others to be deposited in the real
16 estate broker's business or personal account or to be commingled
17 with funds on deposit belonging to the real estate broker.

18 (iv) A real estate broker shall deposit within 2 banking
19 days after the signing of a purchase agreement by all parties,
20 but not later than 5 days after receipt, money belonging to
21 others in a separate custodial or trust fund account maintained
22 by the real estate broker with a bank, savings and loan associa-
23 tion, credit union, or recognized depository until the transac-
24 tion involved is consummated or terminated, at which time the
25 real estate broker shall account for the full amount received.

26 (v) A real estate broker shall keep records of funds
27 deposited in an account, which records shall indicate clearly the

1 date and from whom the money was received, the date deposited,
2 the date of withdrawal, and other pertinent information concern-
3 ing the transaction, and shall show clearly for whose account the
4 money is deposited and to whom the money belongs. The records
5 shall be subject to inspection by the department. A separate
6 custodial or trust fund account shall designate the real estate
7 broker as trustee, and the account shall provide for withdrawal
8 of funds without previous notice. This act and the rules promul-
9 gated pursuant to this act shall not be construed to prohibit the
10 deposit of money accepted under this act in a noninterest bearing
11 account of a state or federally chartered savings and loan asso-
12 ciation, or a state or federally chartered credit union.

13 (H) PROVIDING MISLEADING OR UNTRUTHFUL ADVERTISING, OR USING
14 ANY TRADE NAME OR INSIGNIA OF MEMBERSHIP IN ANY REAL ESTATE ORGA-
15 NIZATION OF WHICH THE LICENSEE IS NOT A MEMBER.

16 (2) SUBJECT TO SECTION 2512A AND EXCEPT AS OTHERWISE PRO-
17 VIDED BY LAW, NOTHING IN THIS ARTICLE SHALL GRANT TO ANY PERSON A
18 PRIVATE RIGHT OR CAUSE OF ACTION FOR DAMAGES OR FOR ENFORCEMENT
19 OF THIS ARTICLE OR ANY RULES PROMULGATED UNDER THIS ARTICLE BY
20 THE DEPARTMENT OR BOARD.

21 SEC. 2517. AN ACTION SHALL NOT BE BROUGHT AGAINST A REAL
22 ESTATE BROKER, AN ASSOCIATE BROKER, OR A REAL ESTATE SALESPERSON
23 UNDER THE FOLLOWING CIRCUMSTANCES:

24 (A) FOR FAILURE TO DISCLOSE TO A PURCHASER OR LESSEE OF REAL
25 PROPERTY THAT A FORMER OCCUPANT HAS OR IS SUSPECTED OF HAVING A
26 HANDICAP AS THAT TERM IS DEFINED AND INTERPRETED UNDER, AND
27 DISCLOSURE OF WHICH WOULD CONSTITUTE UNLAWFUL DISCRIMINATION

1 UNDER, SECTIONS 804, 805, 806, OR 818 OF THE FAIR HOUSING ACT,
2 TITLE VIII OF PUBLIC LAW 90-284, 42 U.S.C. 3604, 3605, 3606, AND
3 3617.

4 (B) FOR FAILURE TO DISCLOSE TO A PURCHASER OR LESSEE OF REAL
5 PROPERTY THAT THE REAL PROPERTY WAS OR WAS SUSPECTED TO HAVE BEEN
6 THE SITE OF A HOMICIDE, SUICIDE, OR OTHER OCCURRENCE PROHIBITED
7 BY LAW WHICH HAD NO MATERIAL EFFECT ON THE CONDITION OF THE REAL
8 PROPERTY OR IMPROVEMENTS LOCATED ON THE REAL PROPERTY.